

CIL

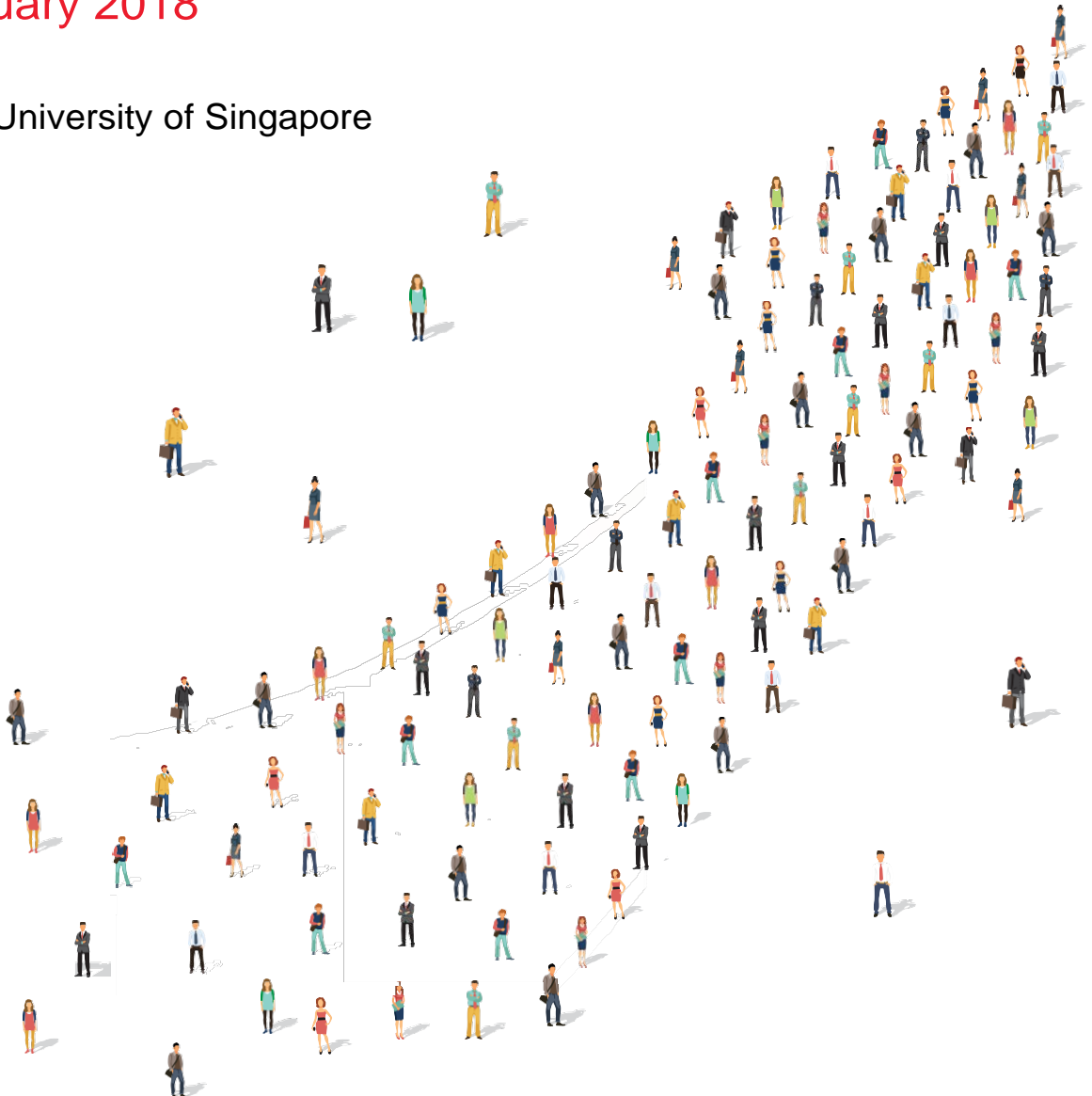
CENTRE FOR INTERNATIONAL LAW
National University of Singapore

Workshop on International Investment Court Proposals

Agenda and Overview

19 January 2018

National University of Singapore



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In its recent treaties with Canada and Vietnam, the European Union has established a new model of investor-state dispute settlement (ISDS). This new model serves as the baseline position for the EU in all of its ongoing investment treaty negotiations. In addition, at the instigation of the EU and Canada, the issue of establishing a multilateral investment court (MIC) along the lines of the EU model is now on the agenda of Working Group III of the United Nations Commission on International Trade Law (UNCITRAL).

The new EU model entails a fundamental reworking of the existing structures of investor-state arbitration. It provides for the replacement of ad hoc arbitral tribunals with standing, treaty-based investment courts, staffed with judges appointed by the states parties. It further establishes a two-tiered system of courts, comprising first-instance and appellate bodies, and allows for appellate review as of right on issues of law and fact.

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The goal of this workshop is to help states develop a framework for analysing proposals to establish investment treaty courts and appellate mechanisms and to give states a rare opportunity to discuss issues of common concern among Asian peer states.

The lines of discussion will include:

- How to evaluate the legitimacy, efficiency, and fairness of processes for the arbitration/adjudication of investor-state disputes;
- How to balance the desire for consistency and correctness with the value of finality in dispute resolution;
- Whether current proposals to establish investment treaty courts are compatible with existing instruments of the investment treaty regime, such as the ICSID Convention, the New York Convention, and existing bilateral investment treaties; and
- Whether proposals for investment treaty courts have the capacity to resolve on-going concerns raised by the current system of ad hoc party-appointment of arbitrators.

The agenda for the workshop follows, together with a number of background papers produced by researchers at CIL and elsewhere. Texts of the investment chapters of the EU's treaties with Canada and Vietnam are also included. We ask that you familiarize yourself with these materials in advance.

While we appreciate that not all governments have reached a public position on proposals for an investment treaty court or the work in UNCITRAL's Working Group III, we would be grateful if participants could share information on the issues they see as relevant to the debate, how they are going about assessing those issues, and any concerns they may have regarding the current modalities of reform. The presentations need not be formal, but we hope that those coming to the workshop will take time to acquaint themselves in advance with these issues.

Once again, we thank you for your time and your participation, and we look forward to welcoming you at the workshop.

Please recall that the workshop is off-the-record and will proceed under the Chatham House Rule of not attributing remarks to any speaker who shares his or her views during the workshop.

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Workshop Agenda

Time	Session	Speakers/Moderators
9.00 AM – 10.30 AM	<ul style="list-style-type: none">• Introduction to the Workshop• Drivers of ISDS Reform and Investment Court Proposals• The Current State of Play	<ul style="list-style-type: none">• N. Jansen Calamita (Moderator)
10.30 AM – 11.00 AM	<i>Morning Break</i>	
11.00 AM – 1.15 PM	<ul style="list-style-type: none">• Evaluating Processes for the Resolution of Investor-State Disputes	<ul style="list-style-type: none">• J. Christopher Thomas QC• N. Jansen Calamita (Moderators)
1.15 PM – 2.15 PM	<i>Lunch</i>	
2.15 PM – 3.45 PM	<ul style="list-style-type: none">• Reconciling an Investment Treaty Court with Existing Instruments of the Investment Treaty Regime	<ul style="list-style-type: none">• N. Jansen Calamita (Moderator)
3.45 PM – 4.15 PM	<i>Afternoon Break</i>	
4.15 PM – 5.45 PM	<ul style="list-style-type: none">• Developing Effective Policy for Bilateral and Multilateral Negotiations	<ul style="list-style-type: none">• Dafina Atanasova (Moderator)
5.45 PM – 6.00 PM	<ul style="list-style-type: none">• Wrap Up	